

Indiana Department of Education

Division of Exceptional Learners

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	1705.01
COMPLAINT INVESTIGATOR:	Jane Taylor-Holmes
DATE OF COMPLAINT:	March 7, 2001
DATE OF REPORT:	April 6, 2001
REQUEST FOR RECONSIDERATION:	yes/revised May 8, 2001
DATE OF CLOSURE:	October 15, 2001

**COMPLAINT ISSUES:**

Whether the Greater Clark County Schools and the Clark County Special Education Cooperative violated:

511 IAC 7-25-4(b) with regard to the school's alleged failure to conduct an educational evaluation and convene the case conference committee (the ACCC@) within 60 instructional days of the date of written parental consent.

511 IAC 7-27-7 with regard to the school's alleged failure to implement the student's *individualized education programs* (the AIEP@) as written, specifically, failing to follow the student's behavior plan and failing to provide homebound instruction.

511 IAC 7-29-1(d) and (f) and 511 IAC 7-29-5 with regard to the school's alleged failure to follow the prescribed procedures when suspending the student.

511 IAC 7-29-2, 511 IAC 7-29-5, and 511 IAC 7-29-6 with regard to the school's alleged failure to follow the prescribed procedures when expelling the student.

During the course of the investigation four additional issues were identified which are:

Whether the Greater Clark County Schools and the Clark County Special Education Cooperative violated:

511 IAC 7-25-6(d)(1) with regard to the school's alleged failure to ensure that the case conference committee reviewed existing evaluation data prior to the Student's 36-month re-evaluation date.

511 IAC 7-27-7(d) with regard to the school's alleged failure to continue to implement an IEP for a period of no more than twelve months.

511 IAC 7-29-1(g)(2) with regard to the school's alleged failure to ensure that the student has the opportunity to receive the special education services specified in the student's individualized education program while serving an in-school suspension.

511 IAC 7-25-6(g)(2) and (3) with regard to the school's alleged failure to notify the complainant after the case conference committee determined that no additional data were needed to determine whether the student continued to be eligible for special education of the complainant's right to request an assessment to determine whether the student continued to be eligible for special education, and that the school was not required to conduct such an assessment unless requested by the complainant.

**FINDINGS OF FACT:**

1. The student (the "Student") is twelve years old and in the sixth grade at the local middle school (the "School"). The Student is eligible for special education and related services as a student with an emotional handicap ("EH").
2. A case conference committee (the "CCC") meeting was held on June 2, 1999, to review the Student's *IEP* written at his annual case review (the "ACR") on March 3, 1999. As a result of this meeting the Student's participation in special education services was increased from 2.5 hours to 5 hours per day. The annual goals remain unchanged from the March 3 IEP, although another short-term instructional objective was added to one of the annual goals. The parent signed with other CCC members indicating her agreement with the CCC recommendations. The duration dates for the March 3/June 2 IEP were from March 4, 1999, to March 4, 2000.
3. The complainant (the "Complainant") contends that at a CCC meeting during the 1999-2000 school year she made a request to the local director of special education (the "Director") for the Student be evaluated.
4. No documentation was provided by the Complainant or the School to indicate that the Complainant made a request for the Student to be evaluated. However, the Complainant contends that she sought an independent evaluation for the Student because she heard nothing further regarding her request that the School evaluate the Student.
5. The Student's ACR was held on February 28, 2000. At the time of the ACR the Student was in a general education classroom with five hours of special education instruction each day. The *CCC Report* states that the Student was sometimes pulled into the self-contained classroom to complete work when he would display disruptive behavior. The CCC wrote a behavioral intervention plan for the Student. The recommendation was to change the Student's placement to full-time special education services in the resource room. The *CCC Report* also states the following. "Due to the concerns expressed by the committee members, the committee agreed that [Student's] needs could best be met in the resource room setting for all academic goals. [Student] would also need to be provided assistance for any classes he would participate in with the general population." The *IEP* lists the Student's re-evaluation date as November 2000. The *IEP* indicates the initiation and duration of services dates as August 16, 2000, to June 2, 2001. However, the CCC Report also states that the Student's current IEP (developed March 3, 1999) will continue to be implemented for the remainder of the 1999-2000 school year. The Complainant signed consent for the change of placement on May 15, 2000.
6. The CCC met again on August 17, 2000, because the Complainant, as indicated in the CCC Report wanted "to give [Student] a fresh start with no special education services." The Student's *IEP* and behavior plan (both written at the February 28, 2000, ACR), observations, and parent data were discussed. The *CCC Report* indicates that the Student had behavior problems in the resource room on the first day of school, and specifically indicated that the Student had had behavior problems in math and language arts, along with displaying assaultive behavior toward another student. School personnel expressed their opinion that the Student should continue with the placement indicated in the *IEP* written at the February 28, 2000, ACR. There was no change of placement or revision to the Student's goals and objectives.
7. The CCC met on August 22, 2000. The *CCC Report* states that "[Complainant] has been concerned that [Student's] plan is not going to work. She would like [Student] to try general education services." The Student's placement was changed so that the Student was to receive all services in the general education classroom. The CCC agreed to reconvene in four weeks to review the Student's progress.

8. The CCC met on October 10, 2000, to review the Student's *IEP*, behavioral data, and observations. The *CCC Report* states that the Student "has been evaluated by [independent evaluators]. The independent evaluation recommendations were for the Student to receive assistance in math and social skills because the Student acting out in those areas was due to his disability. There was no change in the Student's placement; however, the behavior plan was revised. The *CCC Report* indicates reconvening the CCC "when the psychological is complete to review it." A one-page handwritten attachment to the *CCC Report* indicates that the Student was evaluated independently on September 19, 2000.
9. The CCC met on November 10, 2000, to discuss the Student's *IEP* and behavior and discipline issues. The Student was suspended from School on October 24, 25, and 26, 2000, for threatening to harm another student. The Student had two prior out-of-school suspensions on October 5 and 13, 2000. The Student also had accrued 24 demerits for numerous School infractions. The Student's placement was changed to receiving full-time special education services during a shortened instructional day. The copy of the CCC notification for this meeting appears to indicate that psychological test data was to be discussed. However, the original document clearly indicates that an attempt has been made to scratch through the checkmark indicating psychological test data would be reviewed. The original form is completed in red ink and did not copy well. There is no mention of any psychological data presented or discussed during this CCC meeting.
10. The local director of special education (the "Director") reported that references in the October 10, 2000, and November 10, 2000, *CCC Reports* regarding the psychological data had to do with the results of the independent evaluation that the Complainant had obtained for the Student. The Director asserts that the School has asked the Complainant on several occasions for a copy of the independent evaluation results for review at previous CCC meetings; however, the Complainant has not provided the evaluation results. To date, the School has yet to receive a copy of the independent evaluation results.
11. Although the Student's *IEP* written at the February 28, 2000, lists the reevaluation date as November 2000, the CCC met on December 18, 2000, to discuss the Student's 36-month re-evaluation to determine if any additional data were needed. The *CCC Report* states that the Complainant "was unable to attend but gave permission for the conference to proceed without her." The CCC reviewed evaluation data from 1996 and 1997, as well as the Student's standardized test results, and a behavior checklist completed by the Student's teachers on September 27, 2000. The CCC also reviewed the Student's current placement and special education services. The *CCC Report* states that the Student "continues to exhibit significant behavior problems and currently has 29 demerits." The *CCC Report* further states that the CCC "determined that [Student] is appropriately placed at this time and that no additional evaluation is warranted." On the page of the CCC Report delineated as "Form 15.3" it states that "the parent/guardian/surrogate(s) was/were informed of their right to request a complete re-evaluation." At the bottom of the page is states that the parent was informed of and given a copy of the Notice of Procedural Safeguards. However, the Complainant did not attend this CCC meeting. The Complainant received a copy of the CCC Report; however, the Complainant was not notified that she had the right to request an assessment, nor was she informed that the School was not required to conduct such as assessment unless the Complainant requested it.
12. The School has a demerit system in place that is used to address various infractions committed by any student who attends the School. The School's student rights and responsibilities handbook describes the consequences of the accumulation of demerits in the following way:  
5 demerits - one day in-school suspension, contact with parents, appointment with counselor.

10 demerits - two days in-school suspensions, contact with parents, appointment with counselor.

15 demerits - one day out-of-school suspension, contact with parents.

20 demerits - three days out-of-school suspension, contact with parents and reminder of possible future expulsion.

25 demerits - five days out-of-school suspension, parent and school conference upon return to school, and discussion of possible future plans if behavior does not improve.

30 demerits - ten days out-of-school suspension, recommendation for expulsion for 45 school days or remainder of semester.

The demerit system also allows for any student to “work off” demerits after accumulating three demerits. Students who accumulate more than 20 demerits are not allowed to attend or participate in any extracurricular activities.

13. The Complainant was notified in a *Notice of Student Suspension* dated January 23, 2001, from the School principal that the Student was suspended for ten days because he had accrued 30 demerits, violated School rules by failing to follow directives, and displayed student misconduct. The accrual of 30 demerits made the Student subject to an expulsion. The Complainant was also sent a *Notification of Case Conference* on January 22, 2001, informing the Complainant of a CCC meeting scheduled for January 29, 2001.
14. The Student’s attendance report (the “Attendance Report”) indicates the following with regard to the number of days that the Student has been suspended during the 2000-01 school year.

Out-of-School suspension dates

October 5, 2000

October 13, 2000

October 24, 25, 26, 2000

November 27 and 28, 2000

January 24, 2001, through February 5, 2001

In-School suspension dates

September 25, 2000

November 29 and 30, 2000

December 8, 2000

December 18, 2000

15. The School’s student rights and responsibilities handbook describes the in-school-suspension and out-of-school suspension procedures. The handbook describes an in-school suspension as: “In-school suspension is used in behavior problems that require more punitive measures than being kept after school. This room is monitored constantly with school personnel and students are assigned regular classwork by their teachers for the entire time they are there.” There is no documentation to reflect that the Student was provided with the modifications and special education assistance to enable the Student to advance appropriately toward achieving the goals set out in the Student’s IEP during these periods of in-school suspension. Nor was the Student provided with educational services subsequent to the tenth cumulative day of suspension.
16. The CCC met on January 29, 2001, to discuss the Student’s suspension. A chronology of the Student’s behaviors and the resultant demerits were discussed, in addition to a review of the Student’s behavior plan and the interventions used when the Student has displayed disruptive and inappropriate behaviors. The Student was not expelled, and the CCC determined that a change of placement was needed. The CCC recommended placement for the Student in a day treatment program; however, the Complainant was not in agreement with this recommendation. The CCC then discussed and agreed to place the Student on homebound instruction (“Homebound”) pending placement in a day treatment program. Although the School asserts that the parent agreed to a five hour per week homebound program, the CCC Report states: “[i]t was determined to place [the Student] on homebound pending placement at day treatment” and that the Student’s current IEP (the “Current IEP”) would continue to be implemented as written within the Homebound setting. The Current IEP was initially written at the

February 28, 2000, ACR for the 2000-01 school year. (Finding of Fact #5) The Student's instructional day was subsequently shortened; however, the goals and objectives remained the same, as a result of the November 10, 2000, CCC meeting. The November 10, 2000, *IEP* states that the Student was to attend School from 8:30 a.m. to 11:30 a.m. (Finding of Fact #9)

17. Copies of daily behavior checklists completed by the Student's teacher, with accompanying handwritten notes, and copies of the demerit forms indicate that the Student's behavior plan was followed. The completed daily behavior checklists indicate they were put into place on August 16, 2000, to January 23, 2001.
18. The Homebound teacher's (the "Homebound Teacher") time records indicate that the Student began receiving Homebound on February 5, 2001. The Student also received services on February 8, 2001, for a total of five hours of Homebound that week. The Student received ten hours of Homebound during the week of February 12, 2001, and five hours during the week of February 26, 2001. The Director reported that the Homebound Teacher was unavailable to work with the Student during the week of March 5, 2001; however, arrangements were made for another teacher (the "Substitute Teacher") to provide the Student Homebound. The Complainant refused to have the Substitute Teacher work with the Student during the Homebound Teacher's pre-arranged absence. No further time sheets were submitted. Spring break was from March 26, 2001, through March 30, 2001.
19. Notes compiled by the Substitute Teacher state that on March 5, 2001, she called the Complainant to set up Homebound appointments. According to the Substitute Teacher's notes the Complainant stated that she was uncomfortable with a stranger picking up the Student and taking him to the library. The Substitute Teacher then offered to come to the house; however, it would have to be after 3:30 p.m. The Complainant stated that time would be too late because she would be preparing dinner. The Substitute Teacher attempted to find another teacher and subsequently called the Complainant on March 7, 2001, to inform the Complainant that no other teacher was available to work with the Student during the day.
20. The Director reported that the Homebound Teacher offered to "double-up" services to the Student in order to compensate for the week he was unavailable. This offer, asserts the Director, was not accepted by the Complainant.
21. On February 21, 2001, the Complainant requested the Student be given an educational evaluation (the "Evaluation"). The Complainant gave written consent for the Evaluation on March 1, 2001, and the Student was scheduled for testing on March 15, 2001. The Complainant canceled the testing and rescheduled it for March 19, 2001.

## CONCLUSIONS:

1. Findings of Fact #3 and #4 indicate that no documentation was available to determine whether the Complainant requested that the Student be evaluated at the end of the 1999-2000 school year. Further, Finding of Fact #21 indicates that on February 21, 2001, the Complainant gave written consent for the Student to be evaluated, and at the time of this complaint the 60 instructional days have not passed. No violation of 511 IAC 7-25-4(b) occurred.
- 2.a. Finding of Fact #17 indicates that daily behavior checklists were completed by the Student's teacher beginning August 16, 2000, until January 23, 2001. Further, Findings of Fact #6, #8, #9, #11, and #16 indicate that the CCC met regularly and reviewed the Student's behavior issues. No violation of 511 IAC 7-27-7 occurred with regard to implementing the Student's behavior plan.

- 2.b. Findings of Fact #5, #9, and #16 indicate that, as the result of the January 29, 2001, CCC meeting, the Student's placement was changed to homebound services. Although the School asserts that the parent agreed to a five hour per week homebound program, there is nothing in the CCC Report to reflect that agreement or limitation, and the CCC Report states the Student's current IEP (from February 28, 2000, and November 10, 2001) will continue to be implemented. The current IEP provided three hours of service per day. Findings of Fact #18, #19, and #20 indicate that the Student was generally provided with five hours of homebound services per week. The Student's *IEP* was not implemented with regard to the provision of Homebound. A violation of 511 IAC 7-27-7(a) occurred.
3. 511 IAC 7-29-1(g) allows an in-school suspension to be excluded from consideration as a day of suspension if the student has the opportunity to progress appropriately in the general curriculum and receive the special education services specified in his or her IEP during the in-school suspension. Findings of Fact #14 and #15 indicate that the Student was given five days of in-school suspension where no special education services in accordance with the Student's IEP were provided; therefore, the five days of in-school suspension are counted in the cumulative days of suspension for a student eligible for special education services. Findings of Fact #8 and #9 indicate that the CCC met on a regular basis to review the Student's behavior plan prior to the Student reaching ten cumulative days of suspension. The Student's eleventh day of suspension accrued with the suspension on December 8, 2000. Findings of Fact #11, #13, #14, #15, and #16 indicate that, although the CCC met on December 18, 2000, it did not address the Student's behavior plan. No educational services were provided to the Student during this and subsequent periods of out-of-school suspension. Violations of 511 IAC 7-29-1(d), (f), (g)(2) and 511 IAC 7-29-5 are found.
4. Findings of Fact #13, #14, #16, #18, #19, and #20 indicate that the School followed the proper procedures when contemplating expelling the Student. No violation of 511 IAC 7-29-2, 511 IAC 7-29-5, and 511 IAC 7-29-6 occurred.
5. Findings of Fact #5 and #11 indicates that the CCC did not review the Student's existing data to determine the need for a 36-month reevaluation prior to the expiration of the 36-month reevaluation date. A violation of 511 IAC 7-25-6(d)(1) occurred.
6. Findings of Fact #2 and #5 indicate that the Student's IEP dated March 3, 1999, covered special education and related services through March 4, 2000. The CCC met on February 28, 2000, and determined that the March 3, 1999 IEP would continue to be implemented through the end of the 1999-2000 school year. The CCC also developed an IEP for the 2000-2001 school year. Because the CCC did specifically consider and agree that the March 3, 1999, IEP would continue to be implemented for the remainder of the 1999-2000 school year, no violation of 511 IAC 7-27-7(d) is found.
7. Finding of Fact #11 indicates that the Complainant received a copy of the December 18, 2000, CCC Report indicating that the CCC reviewed the Student's existing data and subsequently determined that no additional data were necessary and the reasons for the determination. The CCC Report states that the parent was informed of the right to request a complete re-evaluation. However, the parent did not attend the CCC and could not have been informed of this during the meeting. The form does not contain a clear statement that, in the absence of a verbal explanation, would alert a parent to the right to request a re-evaluation or that the school would not conduct a reevaluation in the absence of such a request. A violation of 511 IAC 7-25-6(g)(2) and (3) occurred.

**The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

The Greater Clark County Schools and the Clark County Special Education Cooperative shall:

- 1.a immediately begin providing three hours of daily special education services to the Student, as indicated in the Student's *IEP* in the Homebound setting. A copy of the Homebound Teacher's time records shall be submitted to the Division at the end of each week to indicate that three hours of daily Homebound have been provided to the Student until the duration of services date of June 2, 2001.
- 1.b. immediately reconvene the CCC to determine if there is a need for compensatory services. A copy of the CCC Report and *IEP* indicating the discussion of compensatory services occurred shall be submitted to the Division no later than May 21, 2001. Additionally, if the CCC determines the need for compensatory services, said services shall be completed by July 23, 2001, and the *CCC Report* and *IEP* shall include a description of how, when, and where those services shall be provided. Further, if compensatory services are provided to the Student, a copy of the Homebound Teacher's time records shall be submitted at the end of each week until the agreed upon compensatory services are completed, but no later than August 1, 2001.
- 2.a. notify all school corporation professional personnel of the suspension requirements as specified in 511 IAC 7-29-1. Specific emphasis shall be placed on 511 IAC 7-29-1(d), (f), and (g) and 511 IAC 7-29-5. A copy of the notification disseminated to all personnel, along with a signature sheet and corresponding title of all personnel who received the notification, shall be submitted to the Division no later than June 2, 2001.
- 2.b. submit a plan of action to address the requirement to provide special education services as indicated in student *IEPs* to any student with a disability serving an in-school suspension. A copy of the plan of action, along with an assurance statement that any student with a disability serving an in-service suspension will be provided special education services as indicated in the student's *IEP*, shall be submitted to the Division no later than June 2, 2001.
3. notify all school corporation professional personnel of the requirement to ensure that the CCC reviews existing evaluation data prior to a student's 36-month reevaluation date. A copy of the notification disseminated to all personnel, along with a signature sheet and corresponding title of all personnel who received the notification, shall be submitted to the Division no later than June 2, 2001.
4. The corrective action previously identified as #4 is rescinded.
3. notify all school corporation professional personnel that after the CCC reviews a student's existing evaluation data as part of the 36-month reevaluation procedure and determines that no additional data are needed and the student continues to be eligible for special education, the parent is to be notified of the determination and the reasons it was made. Additionally, the parent is to be notified of their right to request an assessment to determine if a student continues to be eligible for special education. The parent is also to be informed that the School is not required to conduct such an assessment unless requested by the parent. A copy of the notification disseminated to all personnel, along with a signature sheet and corresponding title of all personnel who received the notification, shall be submitted to the Division no later than June 2, 2001.